



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss

COMMISSION ADJUDICATORY
DOCKET NO. 07-0003

IN THE MATTER
OF
JAMES MANNING

DISPOSITION AGREEMENT

The State Ethics Commission and James Manning enter into this Disposition Agreement pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On June 22, 2005, the Commission initiated a preliminary inquiry, pursuant to G.L. c. 268B, § 4(a), into possible violations of the conflict-of-interest law, G.L. c. 268A, by Manning. The Commission amended the inquiry on March 16, 2006. The Commission has concluded its inquiry and, on July 25, 2006, found reasonable cause to believe that Manning violated G.L. c. 268A.

The Commission and Manning now agree to the following findings of fact and conclusions of law.

Findings of Fact

1. Manning was a Monson selectman during the time relevant.
2. The selectmen also served as the police commissioners.
3. In 2001, Manning asked Police Chief Joseph Rebello if there were any extra police pistols and, if so, to issue one to him for protection.
4. Manning wanted the pistol because he felt threatened by a suspended Monson police sergeant. Manning's primary concern was to protect himself from the suspended sergeant.
5. Manning also felt that he was entitled to a police pistol because he was a police commissioner, even though the selectmen/police commissioners had never been issued police pistols and had no enforcement responsibilities requiring them to carry pistols.
6. Manning could have bought his own pistol .
7. The value of the police pistol was about \$415.
8. Rebello agreed to give Manning a police pistol on the condition that Manning go through the firearm qualification training course that the Monson police officers attended.
9. Manning, who already had a gun permit, completed the course successfully.

10. Subsequently, Rebello issued the weapon to Manning.

11. Manning returned the weapon to the department later in 2001 when he left for military duty. Manning was in possession of the pistol for a period of approximately six months.

12. In 2003, when Manning had returned from military duty, he asked then Police Chief Curtis McKenzie to issue him a police pistol. Manning explained that he had completed the Firearm Safety Course and that the prior chief had issued him a pistol. Manning further explained that he wanted the pistol because he felt threatened by the above-motivated police sergeant. McKenzie found this request very irregular and was noncommittal.

13. On a second occasion, Manning came into the chief's office with a gun holster and said that he wanted to see if the police pistol would fit his holster. McKenzie told him that it would not fit, and Manning left.

14. McKenzie felt pressured by Manning—who was not only a selectman and police commissioner but also a member of McKenzie's appointing authority—but he decided not to give in to Manning's request.

15. In late 2003, McKenzie brought the issue to the attention of the other two selectmen, asking them to advise him on whether he should issue a pistol to Manning. The other two selectmen decided that Manning should not get a police pistol.

16. There is nothing in the Monson town ordinances or the Massachusetts General Laws that authorizes a police commissioner to be issued a police department pistol.

Conclusions of Law

17. As a Monson selectman, Manning was a municipal employee as that term is defined in G.L. c. 268A, § 1(g), and therefore subject to the conflict-of-interest law.

18. Section 23(b)(2) prohibits a municipal employee from, knowingly or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions of substantial value not properly available to similarly situated individuals.

19. Manning's receipt of the police department pistol in 2001 was an unwarranted privilege not properly available to similarly situated individuals.

20. But for his position as a selectman/police commissioner and his authority over Rebello, Manning would not have received the pistol. Thus, Manning knew or had reason to know that he was using his official position in receiving the police pistol from the police chief.

21. The pistol that Manning obtained was an item of substantial value, valued at over \$50.

22. Manning's requests in 2003 to obtain a police department pistol similarly involved his using his official position in attempts to secure an unwarranted privilege of substantial value not properly available to similarly situated individuals.

23. Accordingly, Manning violated § 23(b)(2) in both 2001 and 2003 by knowingly or with reason to know using or attempting to use his official position to secure for himself unwarranted privileges of substantial value that were not properly available to similarly situated individuals.

Resolution

In view of the foregoing violations of G.L. c. 268A by Manning, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Manning:

- (1) that Manning pay to the Commission the sum of \$2,000 as a civil penalty for violating G.L. c. 268A; and
- (2) that Manning waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: January 31, 2007